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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DONTE BROWN,

Defendant and Appellant.

B205315

(Los Angeles County
Super. Ct. No. TA081373)

APPEAL from a judgment of the Los Angeles County Superior Court,
Paul Bacigalupo, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

In September 2005, Donte Brown shot Linda Johnson and Vicky Washington. In March 2006, a jury convicted Brown of the attempted murder of Johnson (count 1), the attempted murder of Washington (count 2), assault with a firearm on Johnson (count 3), assault with a firearm on Washington (count 4), and criminal threats against Johnson (count 5). On a prior appeal, we reversed Brown’s conviction for the attempted murder of Washington (count 2), agreeing with Brown that the trial court’s “zone of harm” instructions related to the count were infected with prejudicial error. We affirmed the judgment in all other respects. (*People v. Brown* (Aug. 22, 2007, B190880, modified on denial of rehearing Sept. 20, 2007) [nonpub. opn.].)¹

On remand, the People elected not to retry Brown for the attempted murder of Washington, and, in January 2008, the trial court resentenced Brown to state prison for a total term of 10 years, four months, plus 25-years-to-life, as follows:

- Count 1 (the attempted murder of Johnson): the mid-term of 7 years, plus a term of 25 years-to-life for personally discharging a firearm thereby causing great bodily injury (Pen. Code, § 12022.53, subd. (d));
- Count 3 (assault on Johnson): stayed pursuant to Penal Code section 654;
- Count 4 (assault on Washington): a consecutive term of 1 year (one-third the mid-term), plus an additional 2 years and 4 months (one-third the mid-terms) for personally using a firearm and personally inflicting great bodily injury (Pen. Code, §§ 12022.5, subd. (a)(1); 12022.7, subd. (a)); and
- Count 5 (criminal threats against Johnson): stayed pursuant to Penal Code section 654.

Brown filed a timely notice of appeal, and we appointed counsel to represent Brown on appeal. On September 19, 2008, Brown’s appointed counsel filed an opening brief raising no issues. On September 26, 2008, we notified Brown by letter that he could submit within 30 days any ground of appeal, argument or contention which he wished us

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Brown’s request for judicial notice of the record on his prior appeal is granted.

to consider. Brown has not responded to our letter. We have independently reviewed the record, and are satisfied that Brown's appointed counsel has fulfilled his duty, and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

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BIGELOW, J.

We concur:

FLIER, Acting P. J.

O'NEILL, J.^{*}

^{*} Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.